

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11239 of 1997

Dated: 06.07.2006

Between
Jayamangala Rama Rao and others

.....Petitioners

and

The Government of A.P.
represented by its Secretary,
Irrigation, Secretariat Buildings,
Saifabad, Hyderabad and others

....Respondents

THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.11239 of 1997

ORDER:

This writ petition is filed seeking a Mandamus declaring that no water cess is liable to be paid by fish tank owners if their lands are not in the ayacut of the Kolleru lake or any other irrigation sources.

It is the case of the petitioners that Kolleru, a fresh water lake, receives drainage water from a catchment of nearly 1839 sq.miles or 4767 sq.KMs approximately through a number of small rivers like Budameru, Ramileru, Tammileru and major drains like Kaikaluru Swamp, Polraju drain, Chandraiah drain, Vatluru drain, Pedapadu drain, Modicodu drain, Pandikodu drain and Tokalapalli drain etc. The lake is connected to sea by only one outlet ie., Upputeru which runs to a distance of 63.6 KMs. There are 22 villages falling within the Bed and Belt area of Kolleru lake in Krishna District in two Mandals viz., Kaikaluru and Mandavalli. All these fish tanks draw water by letting private channels or through oil engines into the fish pond and the height of the Kolleru water in the bed villages is from 3 to 6 feet. There fore, unless water is drawn through pumps the tank cannot be filled. The Government has not provided any irrigation system for leading this water either for agricultural purpose or for fish ponds. Since the water does not flow in a defined channel and since the water is not irrigatable water, no cess is liable to be paid by the Bed villages,

farmers or pisce culture cultivators when this water is used. The fish tank owners who are not in the ayacut need not pay the cess. Hence the Andhra Pradesh (Andhra Area) Irrigation Cess Act 1965 as amended from time to time has no application. Therefore, the action of the respondents in collecting the water cess from the petitioners is arbitrary and illegal.

A detailed counter has been filed by the 4th respondent, wherein it has been asserted that Act 11 of 1988 came into force with effect from 1.7.1986. According to the Act, all Government sources of major and medium irrigation fall under Category-I and all other Government sources which supply water for not less than 5 months fall under Category-II. According to Section 3 of the Act, the Government shall be entitled to levy water cess on the land receiving water for irrigation purposes, from any Government source or irrigation notified under Section 4 for each fasli year. Therefore, the writ petition is devoid of merits and is liable to be dismissed.

Learned counsel for the petitioner strenuously contended that there is no publication as required under Section 4 of the Act and unless and until a publication is made, the authorities are not entitled to collect the cess. Further, the water that is being utilized by the petitioners for their fish tanks is not drawn from notified tank.

Though such a plea is taken while arguing the matter, there is no such plea in the affidavit filed by the petitioner. On the other hand, the respondents in their counter asserted that they are entitled to collect water cess from the lands receiving water for irrigation purposes from any Government source of irrigation

notified under Section 4 of the Act. Therefore, this question need not be gone into at this stage.

Learned counsel for the petitioner submits that the very amendment including Aqua culture for the purpose of water tanks as amended in 1977 has been declared as illegal by this Court and in this regard he relied upon a Judgment reported in ***Yerubandi Jiyyanna v., State of A.P and others***^[1]. What exactly was under challenge insofar as Aqua-culture is concerned is as to the categorization of the criteria for collecting water tanks as category No.I and II. While considering the said aspect, it has been held that Aqua culture is also dependent on the water sources and since there were two categories of water sources which had been created on the basis of the duration for which the water was available, therefore there could not be similar rates for both the categories. Therefore, the writ petitions were allowed to the extent of item Nos.5 and 6 in the schedule to Section 3 of the Amendment act.

Therefore, I am of the opinion that this Judgment has no application to the facts of the present case. The respondents are entitled to collect water tax as per law and also as per the Judgment of this Court reported in *Kantala Srinivas Reddy and others v. State of Andhra Pradesh and others*^[2].

Therefore, the writ petition is dismissed. No costs.

06.07.2006

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^[1] 2003 (2) ALT 1 (D.B)

[\[2\]](#) 2003 (2) ALT 1 (D.B)